

REMARKS & CONCLUSION

Independent claims 1, 20, 23, 24, 28, 29, 30, and 31 have been amended. The amendment eliminates a conditional claim limitation. This conditional claim limitation might be construed to create indefiniteness under 35 U.S.C. § 112, ¶ 2. By eliminating this conditional claim limitation, any possibility of indefiniteness has been preemptively eliminated.

MPEP § 714(I)(C) provides that an applicant may amend "after the date of filing a notice of appeal . . . if the amendment meets the criteria of 37 C.F.R. § 41.33." 37 C.F.R. § 41.33(a), in turn, provides that "[a]mendments filed after the date of filing an appeal . . . and prior to the date a brief is filed pursuant to § 41.37 may be admitted as provided in § 1.116." Rule 116, in turn, states that "[a]n amendment presenting rejected claims in better form for consideration on appeal may be admitted." 37 C.F.R. § 1.116(b)(2). As this amendment places the claims in better condition for appeal, entry is appropriate and respectfully requested. This amendment does not otherwise alter the basis of the Examiner's prior rejection or the counter arguments previously submitted by counsel for the Applicants.

For the record, the Applicants do not believe that the claims were indefinite prior to the present amendment. Said amendment is made out of abundance of caution and to preempt the possibility of any new grounds for rejection by the Board of Patent Appeals and Interferences.

The Examiner is invited to contact the Applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
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